



Reprinted
March 17, 2009

ENGROSSED SENATE BILL No. 136

DIGEST OF SB 136 (Updated March 16, 2009 2:22 pm - DI 92)

Citations Affected: IC 4-13; IC 4-13.6; IC 5-16; IC 5-22; IC 8-10; IC 8-23; IC 36-1.

Synopsis: Purchasing and public works. Removes the expiration date of a provision concerning certain purchasing preferences for certain businesses. Provides that contracts for public works projects may not be awarded to a contractor that does not: (1) employ residents of Indiana as at least 90% of the employees working on the contract; and (2) enter into subcontracts only with subcontractors that employ residents of Indiana as at least 90% of the employees working on the contract. Applies this restriction to contracts entered into by the public works division of the department of administration, any state agency or commission entering into a public works contract, the commission
(Continued next page)

Effective: Upon passage; July 1, 2009.

**Charbonneau, Alting, Arnold,
Delph, Lanane**

(HOUSE SPONSORS — BATTLES, DERMODY)

January 7, 2009, read first time and referred to Committee on Rules and Legislative Procedure.

February 5, 2009, amended; reassigned to Committee on Commerce, Public Policy, and Interstate Cooperation.

February 19, 2009, reported favorably — Do Pass.

February 23, 2009, read second time, ordered engrossed. Engrossed.

February 24, 2009, read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

March 2, 2009, read first time and referred to Committee on Small Business and Economic Development.

March 12, 2009, reported — Do Pass.

March 16, 2009, read second time, amended, ordered engrossed.

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ES 136—LS 6434/DI 13+



governing the ports of Indiana, the department of transportation, and units of local government. Requires the commissioner of the department of administration to prepare an annual report for the public and the legislative council stating, for the contractors awarded public works contracts by the state and the subcontractors with which these contractors entered into subcontracts, the percentage of the contractors' and subcontractors' employees working on the public works contracts who are residents of Indiana. Requires certain public works projects to use Indiana produced steel or foundry products and materials, equipment, and durable goods made in Indiana.

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First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 136

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-13-1-16.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: **Sec. 16.5. (a) As used in this section, "covered**
4 **transaction" means the award of a contract under:**

- 5 (1) IC 4-13.6-6-2.8;
6 (2) IC 5-16-1-7.5;
7 (3) IC 8-10-1-7.7; or
8 (4) IC 8-23-9-4.6.

9 **(b) As used in this section, "resident of Indiana" means a person**
10 **who is at least eighteen (18) years of age and is one (1) of the**
11 **following:**

- 12 (1) A person who has registered a motor vehicle in Indiana.
13 (2) A person who is registered to vote in Indiana.
14 (3) A person who has a child enrolled in an elementary or a
15 secondary school located in Indiana.
16 (4) A person who derives more than one-half (1/2) of the
17 person's gross income (as defined in Section 61 of the Internal

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Revenue Code) from sources in Indiana, according to the provisions applicable to determining the source of adjusted gross income that are set forth in IC 6-3-2-2. However, a person who would otherwise be considered a resident of Indiana under this subdivision is not a resident of Indiana if a preponderance of the evidence concerning the factors set forth in subdivisions (1) through (3) proves that the person is not a resident of Indiana.

(c) Before October 1 of 2010 and each year thereafter, the commissioner shall compile, make available for public inspection, and submit to the legislative council a report for the preceding state fiscal year stating:

(1) for the contractors awarded contracts in covered transactions; and

(2) for the subcontractors with which the contractor referred to in subdivision (1) enter into subcontracts in connection with contracts awarded in covered transactions;

the percentage of the employees of the contractors and subcontractors who work on the contracts and are residents of Indiana. The report to the legislative council must be in an electronic format under IC 5-14-6.

SECTION 2. IC 4-13.6-6-2.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.8. (a) As used in this section, "resident of Indiana" means a person who is at least eighteen (18) years of age and is one (1) of the following:

(1) A person who has registered a motor vehicle in Indiana.

(2) A person who is registered to vote in Indiana.

(3) A person who has a child enrolled in an elementary or a secondary school located in Indiana.

(4) A person who derives more than one-half (1/2) of the person's gross income (as defined in Section 61 of the Internal Revenue Code) from sources in Indiana, according to the provisions applicable to determining the source of adjusted gross income that are set forth in IC 6-3-2-2. However, a person who would otherwise be considered a resident of Indiana under this subdivision is not a resident of Indiana if a preponderance of the evidence concerning the factors set forth in subdivisions (1) through (3) proves that the person is not a resident of Indiana.

(b) When entering a bid under this chapter for a public works project, each contractor shall provide the division with information

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on the number of residents of Indiana who will be employed by the contractor and the number of residents of Indiana who will be employed by any subcontractor of the contractor.

(c) A contract for a public works project may not be awarded to a contractor who does not:

(1) employ residents of Indiana as at least ninety percent (90%) of the employees who work on the contract; and

(2) enter into subcontracts only with subcontractors who employ residents of Indiana as at least ninety percent (90%) of the employees who work on the subcontract.

(d) Before August 15 of 2010 and each year thereafter, the division shall file with the commissioner a report for the preceding year stating:

(1) for each contractor awarded a contract under this chapter; and

(2) for each subcontractor with which a contractor referred to in subdivision (1) enters into a contract in connection with a contract awarded under this chapter;

the percentage of the employees of the contractor or subcontractor who work on the contract and are residents of Indiana.

(e) A contract awarded under this chapter for a public works project is terminated if the division determines that the contractor has failed to:

(1) employ residents of Indiana as at least ninety percent (90%) of the employees who work on the contract; and

(2) enter into subcontracts only with subcontractors who employ residents of Indiana as at least ninety percent (90%) of the employees who work on the subcontract.

(f) A contract awarded under this chapter for a public works project must require a contractor or subcontractor who fails to employ residents of Indiana as at least ninety percent (90%) of the employees who work on the contract or subcontract to pay as liquidated damages one thousand dollars (\$1,000) for each nonresident of Indiana employed that exceeds the number of nonresident employees permitted by this section.

SECTION 3. IC 5-16-1-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7.5. (a) As used in this section, "resident of Indiana" means a person who is at least eighteen (18) years of age and is one (1) of the following:

(1) A person who has registered a motor vehicle in Indiana.

(2) A person who is registered to vote in Indiana.

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(3) A person who has a child enrolled in an elementary or a secondary school located in Indiana.

(4) A person who derives more than one-half (1/2) of the person's gross income (as defined in Section 61 of the Internal Revenue Code) from sources in Indiana, according to the provisions applicable to determining the source of adjusted gross income that are set forth in IC 6-3-2-2. However, a person who would otherwise be considered a resident of Indiana under this subdivision is not a resident of Indiana if a preponderance of the evidence concerning the factors set forth in subdivisions (1) through (3) proves that the person is not a resident of Indiana.

(b) When entering into a contract under this chapter, each contractor shall provide the state or commission with information on the number of residents of Indiana who will be employed by the contractor and the number of residents of Indiana who will be employed by any subcontractor of the contractor.

(c) A contract for a public works project under this chapter may not be awarded to a contractor who does not:

- (1) employ residents of Indiana as at least ninety percent (90%) of the employees who work on the contract; and
- (2) enter into subcontracts only with subcontractors who employ residents of Indiana as at least ninety percent (90%) of the employees who work on the subcontract.

(d) Before August 15 of 2010 and each year thereafter, the state or a commission entering into contracts under this chapter shall file with the commissioner of the Indiana department of administration a report stating:

- (1) for each contractor awarded a contract under this chapter; and
- (2) for each subcontractor with which a contractor referred to in subdivision (1) enters into a contract in connection with a contract awarded under this chapter;

the percentage of the employees of the contractor or subcontractor who work on the contract and are residents of Indiana.

(e) A contract awarded under this chapter for a public works project is terminated if the state or commission determines that the contractor has failed to:

- (1) employ residents of Indiana as at least ninety percent (90%) of the employees who work on the contract; and
- (2) enter into subcontracts only with subcontractors who employ residents of Indiana as at least ninety percent (90%)

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of the employees who work on the subcontract.

(f) A contract awarded under this chapter for a public works project must require a contractor or subcontractor who fails to employ residents of Indiana as at least ninety percent (90%) of the employees who work on the contract or subcontract to pay as liquidated damages one thousand dollars (\$1,000) for each nonresident of Indiana employed that exceeds the number of nonresident employees permitted by this section.

SECTION 4. IC 5-16-8-1, AS AMENDED BY P.L.3-2008, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) The definitions in this section apply throughout this chapter.

(b) "Foundry products" means products cast from ferrous and nonferrous metals by foundries in ~~the United States~~ **Indiana**.

(c) "Person" means a natural person, corporation, limited liability company, partnership, or other business unit or association.

(d) "Public agency" means:

(1) the state of Indiana;

(2) a department, agency, board, commission, or institution of the state of Indiana; or

(3) a county, city, township, school or conservancy district, or other governmental unit or district;

that receives public bids for construction or other public works under Indiana law.

(e) "Steel products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly processed, or processed by a combination of two (2) or more of such operations, from steel made in ~~the United States~~ **Indiana** by the open hearth, basic oxygen, electric furnace, Bessemer, or other steel making process.

(f) ~~"United States" refers to the United States of America. The term includes all territory, continental or insular, subject to the jurisdiction of the United States.~~

SECTION 5. IC 5-16-8-2, AS AMENDED BY P.L.6-2007, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) Each public agency shall require that every contract for the construction, reconstruction, alteration, repair, improvement or maintenance of public works contain a provision that, if any steel or foundry products are to be used or supplied in the performance of the contract or subcontract, only steel or foundry products made in ~~the United States~~ **Indiana** shall be used or supplied in the performance of the contract or any of the subcontracts unless the head of the public agency determines, in writing, that the cost of steel

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or foundry products is considered to be unreasonable.

(b) The head of each public agency shall issue rules which provide that, for purposes of subsection (a), the bid or offered price of any steel or foundry products of ~~domestic~~ **Indiana** origin is not considered unreasonable if the price does not exceed the sum of:

(1) the bid or offered price of like steel or foundry products ~~of foreign origin~~ **originating outside Indiana** (including any applicable duty); plus

(2) a differential of fifteen percent (15%) of the bid or offered price of the steel or foundry products ~~of foreign origin~~ **originating outside Indiana**.

However, the fifteen percent (15%) differential provided by subdivision (2) may be increased to twenty-five percent (25%), if the head of the public agency determines that use of steel or foundry products of ~~domestic~~ **Indiana** origin would benefit the local or state economy through improved job security and employment opportunity. Whenever the head of a public agency determines that the differential should be increased above fifteen percent (15%) for a particular project, the head of the agency shall file a report with the governor and the legislative services agency detailing the reasons for such determination and the probable impact on the economy of the use of ~~domestic~~ **Indiana** steel or foundry castings in the project. A report filed under this subsection with the legislative services agency must be in an electronic format under IC 5-14-6.

SECTION 6. IC 5-16-8-4, AS AMENDED BY P.L.6-2007, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. This chapter does not apply if the head of the public agency determines, in writing, that steel or foundry products are not produced in ~~the United States~~ **Indiana** in sufficient quantities to meet the requirements of the contract.

SECTION 7. IC 5-16-8-6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 6. (a) The Indiana department of administration shall develop criteria for determining whether steel or foundry products are produced in Indiana.**

(b) The Indiana department of administration shall do the following:

(1) Publish on an Internet web site the criteria developed under subsection (a).

(2) Maintain on an Internet web site a list of businesses and products that meet the criteria developed under subsection (a).

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SECTION 8. IC 5-16-13 IS ADDED TO THE INDIANA CODE AS
A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
PASSAGE]:

Chapter 13. Procurement for Public Works Projects

Sec. 1. This chapter does not apply to the terms of a contract
that are subject to IC 5-16-8 for the procurement of steel or
foundry products.

Sec. 2. (a) The definitions in this section apply throughout this
chapter.

(b) "Person" means an individual, corporation, limited liability
company, partnership, or other business unit or association.

(c) "Public agency" means:

(1) the state of Indiana;

(2) a department, agency, board, commission, or institution of
the state of Indiana; or

(3) a county, city, township, school or conservancy district, or
other governmental unit or district;

that receives public bids for construction or other public works
under Indiana law.

Sec. 3. Each public agency shall require that every contract for
the construction, reconstruction, alteration, repair, improvement
or maintenance of a public works project contain a provision that,
if any materials, equipment, or other durable goods are to be used
or supplied in the performance of the contract or subcontract, only
materials, equipment, or durable goods made in Indiana may be
used or supplied in the performance of the contract or any of the
subcontracts unless the head of the public agency determines, in
writing, that the cost of Indiana products is considered to be
unreasonable.

Sec. 4. The head of each public agency shall issue rules that
provide that, for purposes of section 3 of this chapter, the bid or
offered price of any material, equipment, or durable good made in
Indiana is not considered unreasonable if the price does not exceed
the sum of:

(1) the bid or offered price of like materials, equipment, or
durable goods of foreign origin (including any applicable
duty); plus

(2) a differential of fifteen percent (15%) of the bid or offered
price of the materials, equipment, or durable goods of foreign
origin.

However, the fifteen percent (15%) differential provided by
subdivision (2) may be increased to twenty-five percent (25%), if

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the head of the public agency determines that use of material, equipment, or durable goods made in Indiana would benefit the local or state economy through improved job security and employment opportunity. Whenever the head of a public agency determines that the differential should be increased above fifteen percent (15%) for a particular qualified project, the head of the agency shall file a report with the governor and the legislative services agency detailing the reasons for that determination and the probable impact on the economy of the use of material, equipment, or durable goods made in Indiana in a public works project. A report filed under this subsection with the legislative services agency must be in an electronic format under IC 5-14-6.

Sec. 5. A public agency may not authorize or make any payments to a person under a contract for a public works project containing the provision required by section 3 of this chapter unless the public agency is satisfied that the person has fully complied with that provision. Payments made to a person by a public agency that should not have been made as a result of this section are recoverable directly from the contractor or subcontractor who did not comply with section 3 of this chapter by the attorney general upon suit filed in the circuit court of the county in which the contract for the qualified project was executed or performed.

Sec. 6. This chapter does not apply if the head of the public agency determines, in writing, that the materials, equipment, and durable goods required for a public works project are not produced in Indiana in sufficient quantities to meet the requirements of the contract for the qualified project.

Sec. 7. (a) The Indiana department of administration shall develop criteria for determining whether materials, equipment, and durable goods commonly required for public works projects are produced in Indiana.

(b) The Indiana department of administration shall do the following:

(1) Publish on an Internet web site the criteria developed under subsection (a).

(2) Maintain on an Internet web site a list of businesses and materials, equipment, and durable goods that meet the criteria developed under subsection (a).

Sec. 8. This chapter is designed to promote the general welfare of the people of Indiana and is supplemental to all laws concerning public works and shall be liberally construed to fully effectuate its

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purposes.

SECTION 9. IC 5-22-15-20.5, AS AMENDED BY P.L.4-2005, SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 20.5. (a) This section applies only to a contract awarded by a state agency.

(b) As used in this section, "Indiana business" refers to any of the following:

(1) A business whose principal place of business is located in Indiana.

(2) A business that pays a majority of its payroll (in dollar volume) to residents of Indiana.

(3) A business that employs Indiana residents as a majority of its employees.

(4) A business that makes significant capital investments in Indiana.

(5) A business that has a substantial positive economic impact on Indiana as defined by criteria developed under subsection (c).

(c) The Indiana department of administration shall consult with the Indiana economic development corporation in developing criteria for determining whether a business is an Indiana business under subsection (b). The Indiana department of administration may consult with the Indiana economic development corporation to determine whether a particular business meets the requirements of this section and the criteria developed under this subsection.

(d) There are the following price preferences for supplies purchased from an Indiana business:

(1) Five percent (5%) for a purchase expected by the state agency to be less than five hundred thousand dollars (\$500,000).

(2) Three percent (3%) for a purchase expected by the state agency to be at least five hundred thousand dollars (\$500,000) but less than one million dollars (\$1,000,000).

(3) One percent (1%) for a purchase expected by the state agency to be at least one million dollars (\$1,000,000).

(e) Notwithstanding subsection (d), a state agency shall award a contract to the lowest responsive and responsible offeror, regardless of the preference provided in this section, if:

(1) the offeror is an Indiana business; or

(2) the offeror is a business from a state bordering Indiana and the business's home state does not provide a preference to the home state's businesses more favorable than is provided by Indiana law to Indiana businesses.

(f) A business that wants to claim a preference provided under this

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section must do all of the following:

(1) State in the business's bid that the business claims the preference provided by this section.

(2) Provide the following information to the department:

(A) The location of the business's principal place of business. If the business claims the preference as an Indiana business described in subsection (b)(1), a statement explaining the reasons the business considers the location named as the business's principal place of business.

(B) The amount of the business's total payroll and the amount of the business's payroll paid to Indiana residents.

(C) The number of the business's employees and the number of the business's employees who are Indiana residents.

(D) If the business claims the preference as an Indiana business described in subsection (b)(4), a description of the capital investments made in Indiana and a statement of the amount of those capital investments.

(E) If the business claims the preference as an Indiana business described in subsection (b)(5), a description of the substantial positive economic impact the business has on Indiana.

~~(g) This section expires July 1, 2009.~~

SECTION 10. IC 8-10-1-7.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 7.7. (a) As used in this section, "resident of Indiana" means a person who is at least eighteen (18) years of age and is one (1) of the following:**

(1) A person who has registered a motor vehicle in Indiana.

(2) A person who is registered to vote in Indiana.

(3) A person who has a child enrolled in an elementary or a secondary school located in Indiana.

(4) A person who derives more than one-half (1/2) of the person's gross income (as defined in Section 61 of the Internal Revenue Code) from sources in Indiana, according to the provisions applicable to determining the source of adjusted gross income that are set forth in IC 6-3-2-2. However, a person who would otherwise be considered a resident of Indiana under this subdivision is not a resident of Indiana if a preponderance of the evidence concerning the factors set forth in subdivisions (1) through (3) proves that the person is not a resident of Indiana.

(b) When entering into a contract under this chapter, each

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contractor shall provide the commission with information on the number of residents of Indiana who will be employed by the contractor and the number of residents of Indiana who will be employed by any subcontractor of the contractor.

(c) A contract for a public works project under this chapter may not be awarded to a contractor who does not:

(1) employ residents of Indiana as at least ninety percent (90%) of the employees of the contractor who work on the contract; and

(2) enter into subcontracts only with subcontractors who employ residents of Indiana as at least ninety percent (90%) of the employees who work on the subcontract.

(d) Before August 15 of 2010 and each year thereafter, the commission shall file with the commissioner of the Indiana department of administration a report stating:

(1) for each contractor awarded a contract under this chapter; and

(2) for each subcontractor with which a contractor referred to in subdivision (1) enters into a contract in connection with a contract awarded under this chapter;

the percentage of the employees of the contractor or subcontractor who work on the contract and are residents of Indiana.

(e) A contract awarded under this chapter for a public works project is terminated if the commission determines that the contractor has failed to:

(1) employ residents of Indiana as at least ninety percent (90%) of the employees who work on the contract; and

(2) enter into subcontracts only with subcontractors who employ residents of Indiana as at least ninety percent (90%) of the employees who work on the subcontract.

(f) A contract awarded under this chapter for a public works project must require a contractor or subcontractor who fails to employ residents of Indiana as at least ninety percent (90%) of the employees who work on the contract or subcontract to pay as liquidated damages one thousand dollars (\$1,000) for each nonresident of Indiana employed that exceeds the number of nonresident employees permitted by this section.

SECTION 11. IC 8-23-9-4.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4.6. (a) As used in this section, "resident of Indiana" means a person who is at least eighteen (18) years of age and is one (1) of the following:

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(1) A person who has registered a motor vehicle in Indiana.

(2) A person who is registered to vote in Indiana.

(3) A person who has a child enrolled in an elementary or a secondary school located in Indiana.

(4) A person who derives more than one-half (1/2) of the person's gross income (as defined in Section 61 of the Internal Revenue Code) from sources in Indiana, according to the provisions applicable to determining the source of adjusted gross income that are set forth in IC 6-3-2-2. However, a person who would otherwise be considered a resident of Indiana under this subdivision is not a resident of Indiana if a preponderance of the evidence concerning the factors set forth in subdivisions (1) through (3) proves that the person is not a resident of Indiana.

(b) When entering into a contract under this chapter, each contractor shall provide the department with information on the number of residents of Indiana who will be employed by the contractor and the number of residents of Indiana who will be employed by any subcontractor of the contractor.

(c) A contract for a public works project under this chapter may not be awarded to a contractor who does not:

(1) employ residents of Indiana as at least ninety percent (90%) of the employees of the contractor who work on the contract; and

(2) enter into subcontracts only with subcontractors who employ residents of Indiana as at least ninety percent (90%) of the employees working on the subcontract.

(d) Before August 15 of 2010 and each year thereafter, the department shall file with the commissioner of the Indiana department of administration a report stating:

(1) for each contractor awarded a contract under this chapter; and

(2) for each subcontractor with which a contractor referred to in subdivision (1) enters into a contract in connection with a contract awarded under this chapter;

the percentage of the employees of the contractor or subcontractor who work on the contract and are residents of Indiana.

(e) A contract awarded under this chapter for a public works project is terminated if the department determines that the contractor has failed to:

(1) employ residents of Indiana as at least ninety percent (90%) of the employees who work on the contract; and

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(2) enter into subcontracts only with subcontractors who employ residents of Indiana as at least ninety percent (90%) of the employees who work on the subcontract.

(f) A contract awarded under this chapter for a public works project must require a contractor or subcontractor who fails to employ residents of Indiana as at least ninety percent (90%) of the employees who work on the contract or subcontract to pay as liquidated damages one thousand dollars (\$1,000) for each nonresident of Indiana employed that exceeds the number of nonresident employees permitted by this section.

SECTION 12. IC 36-1-12-5.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5.5. (a) As used in this section, "resident of Indiana" means a person who is at least eighteen (18) years of age and is one (1) of the following:

- (1) A person who has registered a motor vehicle in Indiana.
- (2) A person who is registered to vote in Indiana.
- (3) A person who has a child enrolled in an elementary or a secondary school located in Indiana.
- (4) A person who derives more than one-half (1/2) of the person's gross income (as defined in Section 61 of the Internal Revenue Code) from sources in Indiana, according to the provisions applicable to determining the source of adjusted gross income that are set forth in IC 6-3-2-2. However, a person who would otherwise be considered a resident of Indiana under this subdivision is not a resident of Indiana if a preponderance of the evidence concerning the factors set forth in subdivisions (1) through (3) proves that the person is not a resident of Indiana.

(b) When entering a bid under this chapter, each contractor shall provide the unit of local government with information on the number of residents of Indiana who will be employed by the contractor and the number of residents of Indiana who will be employed by any subcontractor of the contractor.

(c) A contract for a public works project under this chapter may not be awarded to a contractor who does not:

- (1) employ residents of Indiana as at least ninety percent (90%) of the employees of the contractor who work on the contract; and
- (2) enter into subcontracts only with subcontractors who employ residents of Indiana as at least ninety percent (90%) of the employees working on the subcontract.

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1 (d) A contract awarded under this chapter for a public works
2 project is terminated if the unit determines that the contractor has
3 failed to:

4 (1) employ residents of Indiana as at least ninety percent
5 (90%) of the employees who work on the contract; and

6 (2) enter into subcontracts only with subcontractors who
7 employ residents of Indiana as at least ninety percent (90%)
8 of the employees who work on the subcontract.

9 (e) A contract awarded under this chapter for a public works
10 project must require a contractor or subcontractor who fails to
11 employ residents of Indiana as at least ninety percent (90%) of the
12 employees who work on the contract or subcontract to pay as
13 liquidated damages one thousand dollars (\$1,000) for each
14 nonresident of Indiana employed that exceeds the number of
15 nonresident employees permitted by this section.

16 SECTION 13. An emergency is declared for this act.

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COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 136, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Commerce, Public Policy, and Interstate Cooperation.

(Reference is to SB 136 as introduced.)

LONG, Chairperson

COMMITTEE REPORT

Madam President: The Senate Committee on Commerce, Public Policy and Interstate Cooperation, to which was referred Senate Bill No. 136, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 136 as printed February 6, 2009.)

ALTING, Chairperson

Committee Vote: Yeas 9, Nays 0.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Small Business and Economic Development, to which was referred Senate Bill 136, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

RESKE, Chair

Committee Vote: yeas 10, nays 0.

 HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 136 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 4-13-1-16.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE UPON PASSAGE]: **Sec. 16.5. (a) As used in this section, "covered transaction" means the award of a contract under:**

- (1) IC 4-13.6-6-2.8;
- (2) IC 5-16-1-7.5;
- (3) IC 8-10-1-7.7; or
- (4) IC 8-23-9-4.6.

(b) As used in this section, "resident of Indiana" means a person who is at least eighteen (18) years of age and is one (1) of the following:

- (1) A person who has registered a motor vehicle in Indiana.
- (2) A person who is registered to vote in Indiana.
- (3) A person who has a child enrolled in an elementary or a secondary school located in Indiana.
- (4) A person who derives more than one-half (1/2) of the person's gross income (as defined in Section 61 of the Internal Revenue Code) from sources in Indiana, according to the provisions applicable to determining the source of adjusted gross income that are set forth in IC 6-3-2-2. However, a person who would otherwise be considered a resident of Indiana under this subdivision is not a resident of Indiana if a preponderance of the evidence concerning the factors set forth in subdivisions (1) through (3) proves that the person is



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not a resident of Indiana.

(c) Before October 1 of 2010 and each year thereafter, the commissioner shall compile, make available for public inspection, and submit to the legislative council a report for the preceding state fiscal year stating:

(1) for the contractors awarded contracts in covered transactions; and

(2) for the subcontractors with which the contractor referred to in subdivision (1) enter into subcontracts in connection with contracts awarded in covered transactions;

the percentage of the employees of the contractors and subcontractors who work on the contracts and are residents of Indiana. The report to the legislative council must be in an electronic format under IC 5-14-6.

SECTION 2. IC 4-13.6-6-2.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.8. (a) As used in this section, "resident of Indiana" means a person who is at least eighteen (18) years of age and is one (1) of the following:

(1) A person who has registered a motor vehicle in Indiana.

(2) A person who is registered to vote in Indiana.

(3) A person who has a child enrolled in an elementary or a secondary school located in Indiana.

(4) A person who derives more than one-half (1/2) of the person's gross income (as defined in Section 61 of the Internal Revenue Code) from sources in Indiana, according to the provisions applicable to determining the source of adjusted gross income that are set forth in IC 6-3-2-2. However, a person who would otherwise be considered a resident of Indiana under this subdivision is not a resident of Indiana if a preponderance of the evidence concerning the factors set forth in subdivisions (1) through (3) proves that the person is not a resident of Indiana.

(b) When entering a bid under this chapter for a public works project, each contractor shall provide the division with information on the number of residents of Indiana who will be employed by the contractor and the number of residents of Indiana who will be employed by any subcontractor of the contractor.

(c) A contract for a public works project may not be awarded to a contractor who does not:

(1) employ residents of Indiana as at least ninety percent (90%) of the employees who work on the contract; and

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(2) enter into subcontracts only with subcontractors who employ residents of Indiana as at least ninety percent (90%) of the employees who work on the subcontract.

(d) Before August 15 of 2010 and each year thereafter, the division shall file with the commissioner a report for the preceding year stating:

(1) for each contractor awarded a contract under this chapter; and

(2) for each subcontractor with which a contractor referred to in subdivision (1) enters into a contract in connection with a contract awarded under this chapter;

the percentage of the employees of the contractor or subcontractor who work on the contract and are residents of Indiana.

(e) A contract awarded under this chapter for a public works project is terminated if the division determines that the contractor has failed to:

(1) employ residents of Indiana as at least ninety percent (90%) of the employees who work on the contract; and

(2) enter into subcontracts only with subcontractors who employ residents of Indiana as at least ninety percent (90%) of the employees who work on the subcontract.

(f) A contract awarded under this chapter for a public works project must require a contractor or subcontractor who fails to employ residents of Indiana as at least ninety percent (90%) of the employees who work on the contract or subcontract to pay as liquidated damages one thousand dollars (\$1,000) for each nonresident of Indiana employed that exceeds the number of nonresident employees permitted by this section.

SECTION 3. IC 5-16-1-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7.5. (a) As used in this section, "resident of Indiana" means a person who is at least eighteen (18) years of age and is one (1) of the following:

(1) A person who has registered a motor vehicle in Indiana.

(2) A person who is registered to vote in Indiana.

(3) A person who has a child enrolled in an elementary or a secondary school located in Indiana.

(4) A person who derives more than one-half (1/2) of the person's gross income (as defined in Section 61 of the Internal Revenue Code) from sources in Indiana, according to the provisions applicable to determining the source of adjusted gross income that are set forth in IC 6-3-2-2. However, a

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person who would otherwise be considered a resident of Indiana under this subdivision is not a resident of Indiana if a preponderance of the evidence concerning the factors set forth in subdivisions (1) through (3) proves that the person is not a resident of Indiana.

(b) When entering into a contract under this chapter, each contractor shall provide the state or commission with information on the number of residents of Indiana who will be employed by the contractor and the number of residents of Indiana who will be employed by any subcontractor of the contractor.

(c) A contract for a public works project under this chapter may not be awarded to a contractor who does not:

- (1) employ residents of Indiana as at least ninety percent (90%) of the employees who work on the contract; and
- (2) enter into subcontracts only with subcontractors who employ residents of Indiana as at least ninety percent (90%) of the employees who work on the subcontract.

(d) Before August 15 of 2010 and each year thereafter, the state or a commission entering into contracts under this chapter shall file with the commissioner of the Indiana department of administration a report stating:

- (1) for each contractor awarded a contract under this chapter; and
- (2) for each subcontractor with which a contractor referred to in subdivision (1) enters into a contract in connection with a contract awarded under this chapter;

the percentage of the employees of the contractor or subcontractor who work on the contract and are residents of Indiana.

(e) A contract awarded under this chapter for a public works project is terminated if the state or commission determines that the contractor has failed to:

- (1) employ residents of Indiana as at least ninety percent (90%) of the employees who work on the contract; and
- (2) enter into subcontracts only with subcontractors who employ residents of Indiana as at least ninety percent (90%) of the employees who work on the subcontract.

(f) A contract awarded under this chapter for a public works project must require a contractor or subcontractor who fails to employ residents of Indiana as at least ninety percent (90%) of the employees who work on the contract or subcontract to pay as liquidated damages one thousand dollars (\$1,000) for each nonresident of Indiana employed that exceeds the number of

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nonresident employees permitted by this section.

SECTION 4. IC 5-16-8-1, AS AMENDED BY P.L.3-2008, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) The definitions in this section apply throughout this chapter.

(b) "Foundry products" means products cast from ferrous and nonferrous metals by foundries in ~~the United States~~ **Indiana**.

(c) "Person" means a natural person, corporation, limited liability company, partnership, or other business unit or association.

(d) "Public agency" means:

- (1) the state of Indiana;
- (2) a department, agency, board, commission, or institution of the state of Indiana; or
- (3) a county, city, township, school or conservancy district, or other governmental unit or district;

that receives public bids for construction or other public works under Indiana law.

(e) "Steel products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly processed, or processed by a combination of two (2) or more of such operations, from steel made in ~~the United States~~ **Indiana** by the open hearth, basic oxygen, electric furnace, Bessemer, or other steel making process.

(f) ~~"United States" refers to the United States of America. The term includes all territory, continental or insular, subject to the jurisdiction of the United States.~~

SECTION 5. IC 5-16-8-2, AS AMENDED BY P.L.6-2007, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) Each public agency shall require that every contract for the construction, reconstruction, alteration, repair, improvement or maintenance of public works contain a provision that, if any steel or foundry products are to be used or supplied in the performance of the contract or subcontract, only steel or foundry products made in ~~the United States~~ **Indiana** shall be used or supplied in the performance of the contract or any of the subcontracts unless the head of the public agency determines, in writing, that the cost of steel or foundry products is considered to be unreasonable.

(b) The head of each public agency shall issue rules which provide that, for purposes of subsection (a), the bid or offered price of any steel or foundry products of ~~domestic~~ **Indiana** origin is not considered unreasonable if the price does not exceed the sum of:

- (1) the bid or offered price of like steel or foundry products of ~~foreign origin~~ **originating outside Indiana** (including any

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applicable duty); plus

(2) a differential of fifteen percent (15%) of the bid or offered price of the steel or foundry products ~~of foreign origin~~ **originating outside Indiana.**

However, the fifteen percent (15%) differential provided by subdivision (2) may be increased to twenty-five percent (25%), if the head of the public agency determines that use of steel or foundry products of ~~domestic Indiana~~ origin would benefit the local or state economy through improved job security and employment opportunity. Whenever the head of a public agency determines that the differential should be increased above fifteen percent (15%) for a particular project, the head of the agency shall file a report with the governor and the legislative services agency detailing the reasons for such determination and the probable impact on the economy of the use of ~~domestic Indiana~~ steel or foundry castings in the project. A report filed under this subsection with the legislative services agency must be in an electronic format under IC 5-14-6.

SECTION 6. IC 5-16-8-4, AS AMENDED BY P.L.6-2007, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. This chapter does not apply if the head of the public agency determines, in writing, that steel or foundry products are not produced in ~~the United States~~ **Indiana** in sufficient quantities to meet the requirements of the contract.

SECTION 7. IC 5-16-8-6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 6. (a) The Indiana department of administration shall develop criteria for determining whether steel or foundry products are produced in Indiana.**

(b) The Indiana department of administration shall do the following:

- (1) Publish on an Internet web site the criteria developed under subsection (a).**
- (2) Maintain on an Internet web site a list of businesses and products that meet the criteria developed under subsection (a).**

SECTION 8. IC 5-16-13 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 13. Procurement for Public Works Projects

Sec. 1. This chapter does not apply to the terms of a contract that are subject to IC 5-16-8 for the procurement of steel or foundry products.

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Sec. 2. (a) The definitions in this section apply throughout this chapter.

(b) "Person" means an individual, corporation, limited liability company, partnership, or other business unit or association.

(c) "Public agency" means:

- (1) the state of Indiana;**
- (2) a department, agency, board, commission, or institution of the state of Indiana; or**
- (3) a county, city, township, school or conservancy district, or other governmental unit or district;**

that receives public bids for construction or other public works under Indiana law.

Sec. 3. Each public agency shall require that every contract for the construction, reconstruction, alteration, repair, improvement or maintenance of a public works project contain a provision that, if any materials, equipment, or other durable goods are to be used or supplied in the performance of the contract or subcontract, only materials, equipment, or durable goods made in Indiana may be used or supplied in the performance of the contract or any of the subcontracts unless the head of the public agency determines, in writing, that the cost of Indiana products is considered to be unreasonable.

Sec. 4. The head of each public agency shall issue rules that provide that, for purposes of section 3 of this chapter, the bid or offered price of any material, equipment, or durable good made in Indiana is not considered unreasonable if the price does not exceed the sum of:

- (1) the bid or offered price of like materials, equipment, or durable goods of foreign origin (including any applicable duty); plus**
- (2) a differential of fifteen percent (15%) of the bid or offered price of the materials, equipment, or durable goods of foreign origin.**

However, the fifteen percent (15%) differential provided by subdivision (2) may be increased to twenty-five percent (25%), if the head of the public agency determines that use of material, equipment, or durable goods made in Indiana would benefit the local or state economy through improved job security and employment opportunity. Whenever the head of a public agency determines that the differential should be increased above fifteen percent (15%) for a particular qualified project, the head of the agency shall file a report with the governor and the legislative

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services agency detailing the reasons for that determination and the probable impact on the economy of the use of material, equipment, or durable goods made in Indiana in a public works project. A report filed under this subsection with the legislative services agency must be in an electronic format under IC 5-14-6.

Sec. 5. A public agency may not authorize or make any payments to a person under a contract for a public works project containing the provision required by section 3 of this chapter unless the public agency is satisfied that the person has fully complied with that provision. Payments made to a person by a public agency that should not have been made as a result of this section are recoverable directly from the contractor or subcontractor who did not comply with section 3 of this chapter by the attorney general upon suit filed in the circuit court of the county in which the contract for the qualified project was executed or performed.

Sec. 6. This chapter does not apply if the head of the public agency determines, in writing, that the materials, equipment, and durable goods required for a public works project are not produced in Indiana in sufficient quantities to meet the requirements of the contract for the qualified project.

Sec. 7. (a) The Indiana department of administration shall develop criteria for determining whether materials, equipment, and durable goods commonly required for public works projects are produced in Indiana.

(b) The Indiana department of administration shall do the following:

- (1)** Publish on an Internet web site the criteria developed under subsection (a).
- (2)** Maintain on an Internet web site a list of businesses and materials, equipment, and durable goods that meet the criteria developed under subsection (a).

Sec. 8. This chapter is designed to promote the general welfare of the people of Indiana and is supplemental to all laws concerning public works and shall be liberally construed to fully effectuate its purposes."

Page 3, after line 4, begin a new paragraph and insert:

"SECTION 10. IC 8-10-1-7.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 7.7. (a)** As used in this section, "resident of Indiana" means a person who is at least eighteen (18) years of age and is one (1) of the following:

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- (1) A person who has registered a motor vehicle in Indiana.
- (2) A person who is registered to vote in Indiana.
- (3) A person who has a child enrolled in an elementary or a secondary school located in Indiana.
- (4) A person who derives more than one-half (1/2) of the person's gross income (as defined in Section 61 of the Internal Revenue Code) from sources in Indiana, according to the provisions applicable to determining the source of adjusted gross income that are set forth in IC 6-3-2-2. However, a person who would otherwise be considered a resident of Indiana under this subdivision is not a resident of Indiana if a preponderance of the evidence concerning the factors set forth in subdivisions (1) through (3) proves that the person is not a resident of Indiana.

(b) When entering into a contract under this chapter, each contractor shall provide the commission with information on the number of residents of Indiana who will be employed by the contractor and the number of residents of Indiana who will be employed by any subcontractor of the contractor.

(c) A contract for a public works project under this chapter may not be awarded to a contractor who does not:

- (1) employ residents of Indiana as at least ninety percent (90%) of the employees of the contractor who work on the contract; and
- (2) enter into subcontracts only with subcontractors who employ residents of Indiana as at least ninety percent (90%) of the employees who work on the subcontract.

(d) Before August 15 of 2010 and each year thereafter, the commission shall file with the commissioner of the Indiana department of administration a report stating:

- (1) for each contractor awarded a contract under this chapter; and
- (2) for each subcontractor with which a contractor referred to in subdivision (1) enters into a contract in connection with a contract awarded under this chapter;

the percentage of the employees of the contractor or subcontractor who work on the contract and are residents of Indiana.

(e) A contract awarded under this chapter for a public works project is terminated if the commission determines that the contractor has failed to:

- (1) employ residents of Indiana as at least ninety percent (90%) of the employees who work on the contract; and

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(2) enter into subcontracts only with subcontractors who employ residents of Indiana as at least ninety percent (90%) of the employees who work on the subcontract.

(f) A contract awarded under this chapter for a public works project must require a contractor or subcontractor who fails to employ residents of Indiana as at least ninety percent (90%) of the employees who work on the contract or subcontract to pay as liquidated damages one thousand dollars (\$1,000) for each nonresident of Indiana employed that exceeds the number of nonresident employees permitted by this section.

SECTION 11. IC 8-23-9-4.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4.6. (a) As used in this section, "resident of Indiana" means a person who is at least eighteen (18) years of age and is one (1) of the following:

- (1) A person who has registered a motor vehicle in Indiana.
- (2) A person who is registered to vote in Indiana.
- (3) A person who has a child enrolled in an elementary or a secondary school located in Indiana.
- (4) A person who derives more than one-half (1/2) of the person's gross income (as defined in Section 61 of the Internal Revenue Code) from sources in Indiana, according to the provisions applicable to determining the source of adjusted gross income that are set forth in IC 6-3-2-2. However, a person who would otherwise be considered a resident of Indiana under this subdivision is not a resident of Indiana if a preponderance of the evidence concerning the factors set forth in subdivisions (1) through (3) proves that the person is not a resident of Indiana.

(b) When entering into a contract under this chapter, each contractor shall provide the department with information on the number of residents of Indiana who will be employed by the contractor and the number of residents of Indiana who will be employed by any subcontractor of the contractor.

(c) A contract for a public works project under this chapter may not be awarded to a contractor who does not:

- (1) employ residents of Indiana as at least ninety percent (90%) of the employees of the contractor who work on the contract; and
- (2) enter into subcontracts only with subcontractors who employ residents of Indiana as at least ninety percent (90%) of the employees working on the subcontract.

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(d) Before August 15 of 2010 and each year thereafter, the department shall file with the commissioner of the Indiana department of administration a report stating:

- (1) for each contractor awarded a contract under this chapter; and
- (2) for each subcontractor with which a contractor referred to in subdivision (1) enters into a contract in connection with a contract awarded under this chapter;

the percentage of the employees of the contractor or subcontractor who work on the contract and are residents of Indiana.

(e) A contract awarded under this chapter for a public works project is terminated if the department determines that the contractor has failed to:

- (1) employ residents of Indiana as at least ninety percent (90%) of the employees who work on the contract; and
- (2) enter into subcontracts only with subcontractors who employ residents of Indiana as at least ninety percent (90%) of the employees who work on the subcontract.

(f) A contract awarded under this chapter for a public works project must require a contractor or subcontractor who fails to employ residents of Indiana as at least ninety percent (90%) of the employees who work on the contract or subcontract to pay as liquidated damages one thousand dollars (\$1,000) for each nonresident of Indiana employed that exceeds the number of nonresident employees permitted by this section.

SECTION 12. IC 36-1-12-5.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5.5. (a) As used in this section, "resident of Indiana" means a person who is at least eighteen (18) years of age and is one (1) of the following:

- (1) A person who has registered a motor vehicle in Indiana.
- (2) A person who is registered to vote in Indiana.
- (3) A person who has a child enrolled in an elementary or a secondary school located in Indiana.
- (4) A person who derives more than one-half (1/2) of the person's gross income (as defined in Section 61 of the Internal Revenue Code) from sources in Indiana, according to the provisions applicable to determining the source of adjusted gross income that are set forth in IC 6-3-2-2. However, a person who would otherwise be considered a resident of Indiana under this subdivision is not a resident of Indiana if a preponderance of the evidence concerning the factors set

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forth in subdivisions (1) through (3) proves that the person is not a resident of Indiana.

(b) When entering a bid under this chapter, each contractor shall provide the unit of local government with information on the number of residents of Indiana who will be employed by the contractor and the number of residents of Indiana who will be employed by any subcontractor of the contractor.

(c) A contract for a public works project under this chapter may not be awarded to a contractor who does not:

(1) employ residents of Indiana as at least ninety percent (90%) of the employees of the contractor who work on the contract; and

(2) enter into subcontracts only with subcontractors who employ residents of Indiana as at least ninety percent (90%) of the employees working on the subcontract.

(d) A contract awarded under this chapter for a public works project is terminated if the unit determines that the contractor has failed to:

(1) employ residents of Indiana as at least ninety percent (90%) of the employees who work on the contract; and

(2) enter into subcontracts only with subcontractors who employ residents of Indiana as at least ninety percent (90%) of the employees who work on the subcontract.

(e) A contract awarded under this chapter for a public works project must require a contractor or subcontractor who fails to employ residents of Indiana as at least ninety percent (90%) of the employees who work on the contract or subcontract to pay as liquidated damages one thousand dollars (\$1,000) for each nonresident of Indiana employed that exceeds the number of nonresident employees permitted by this section.

SECTION 13. An emergency is declared for this act."

Renumber all SECTIONS consecutively.

(Reference is to ESB 136 as printed March 13, 2009.)

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